IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN. V. RATNA & ANOTHER.

D. B. CRIMINAL APPEAL NO. 252/85

Under Section 378 (iii) & (i), Cr.P.C.,against the Judgment dated -1-04-1985,passed by Shri M.L.Vyas, RHJS,Sessions Judge, Jalore in Sessions Case No.19/84.

DATE OF JUDGMENT :::: 03-10-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, P.P., for the State – appellant.
Mr. Vishal Saraswat and Mr.Sanjay Mathur, for respondents.

BY THE COURT: (PER HON'BLE MR. BHANDARI, J.):-

This appeal is directed against the judgment dated 01-04-1985, passed by the District & Sessions Judge, Jalore, in Sessions Case No.19/84.

The trial Court acquitted both the accused from the charges framed against them under Sections 302/323 and 302/114, IPC. Aggrieved by the order of acquittal, the State of Rajasthan has filed this appeal.

The prosecution case was started with lodging of an FIR by Jawahar Singh on 05.05.1984, at 10.30 a.m., in Police Station, Raniwara. Jawahar Singh stated that today morning, he along with Nag Singh, Jan Singh and Dharm Singh came to village Ratanpur at around 9.00 a.m. Bhup Singh s/o. Nav Singh got engaged with Ratan Singh's daughter. Thus, all of them came with clothes and ornaments at the place of Ratan Singh. When they reached Ratan Singh's place, then Ratna and his son Agra were found standing in their residence. After seeing them, Ratna stated that why they had brought clothes and ornaments when he had refused to do so. Agra standing side by stated that all the four should not be allowed to go alive. Ratna then taking up a lathi, having iron wiring on it and first assaulted Jan Singh by hitting lathi on his left knee and, thereafter, Ratna assaulted Nag Singh by hitting lathi on his middle of the head. Since Nag Singh was having a turban, thus due to the blow, blood did not come out. However, Nag Singh fell down, after losing his consciousness. Injured Nag Singh was immediately taken to the

hospital in a motor vehicle available in the village. It was last reported that because of the presence of complainant and two other persons that Nag Singh was saved, otherwise he would have been killed by the assailants at the place of occurrence. The FIR, bearing No.23/84, was registered under Section 307, IPC, at 3.30 p.m. Thus, case was converted under Sections 302 and 302/323, IPC, against Ratna and Sections 302/114, IPC, against accused Agra after the death of Nag Singh.

After registration of case, Police conducted usual investigation and, thereafter, challan was filed against apprehended accused under Sections 302, 323 and 302/114, IPC, against Ratna and Agra respectively. Since the challan was filed in the Court of Munsif and Judicial Magistrate, Bhinmal, thus the matter was committed to the Trial Court vide order dated 13.06.1984.

The learned trial Court framed charges against the accused Ratna under Sections 302 and 323, IPC, whereas against accused Agra, under Section 302/114 of IPC, vide its order dated 04.09.1984. Accused denied charges and claimed trial.

At the trial, seven witnesses were produced by the

prosecution, whereas thirteen documents were exhibited. In defence, statement of one witness was recorded and two documents were produced. The statements of accused were recorded under Section 313 of Cr. P.C.

Assailing the judgment of the trial Court, the learned Public Prosecutor urged that the occurrence was seen by three witnesses, who were then produced by the prosecution as PW 1 Jawahar Singh, PW 2 Jan Singh and PW 3 Dharm Singh. All the three witnesses gave the correct story of occurrence. Hence, the statement of one witness was corroborated by the other witness, proving that due to provocation given by Agra, Ratna assaulted Jan Singh and deceased Nag Singh. Nag Singh, thereafter, died due to serious head injury caused by a lathi, having iron wiring. The statements of eye witnesses were corroborated even by the medical evidence, yet the learned trial Court considered it to be a case falling under Section 100 of IPC to go give benefit of self defence to the accused. According to the learned counsel, Ratna's daughter was engaged with the deceased's brother's son, hence deceased, along with three went to the place of Ratna with ornaments and clothes. However, Ratna, thereafter, gave blow to Jan Singh and Nag Singh, out of which Nag Singh died while in hospital. Thus, it was not a case where accused were entitled for the benefit of self defence by bringing case

under Section 100 of the IPC. It was accordingly prayed that the judgment of the trial Court be set aside and accused be convicted and sentenced under the provisions, for which they were charged.

Per contra, learned counsel for the accused urged that the prosecution has not given true story while lodging FIR, rhather they suppressed the material facts as to how fight was broken out. According to the defence, Ratna's daughter was not engaged with deceased's relative, yet deceased along with three others came with lathi to forcefully take away Sukhi and, in that process, some fight took place between the two groups. According to the learned counsel for non-appellants, accused Ratna tried to save his daughter who was then tried to be kidnapped by the accused and others and, in that process, deceased sustained a blow, then it cannot be said to be a case falling under Section 302, IPC, rather looking to the facts, the accused were having right of self-defence as their case was falling within Exception Fifth of Section 100 of IPC. It was, thus, prayed that the judgment of the trial Court deserves to be maintained.

We have considered the rival submissions of the learned counsel for the parties and scanned the material carefully.

There are three eye witnesses of the occurrence and all the three witnesses were produced by the prosecution as PW 1 Jawahar Singh, PW 2 Jan Singh and PW 3 Dharm Singh. Jawahar Singh (P.W.1) stated that he along with Nag Singh, Jan Singh and Dharm Singh reached Ratana's residence at about 9.00 a.m. Where Ratna and his son Agra were found standing in their floor area. Ratna was holding a iron wire lathi. Immediately after their reaching, Ratna asked as to why they have come to his place and thereupon, Agra stated that they should not be allowed to go alive. Immediately thereafter, Ratna started hitting Jan Singh and out of four hits, one lathi hit was inflicted on the left knee of Jan Singh. Ratna, thereafter, gave one blow on the head of Nag Singh, due to which Nag Singh fell down and, thereafter, Agra and Ratna ran away from the scene of occurrence. In the cross-examination, witness stated that he had not brought a lathi, though admitted that in his police statement, he made a statement that one lathi was taken from the scene of occurrence itself and, thereafter, saved himself from 2 – 3 blows given by Ratan Singh. The witness further stated that neighbours did not come after hearing noise.

PW 2 Jan Singh, in his statement, repeated the same story as was given by PW 1 Jawahar Singh. In his cross-examination,

he had admitted that even after occurrence, no neighbour visited the place. Further, it was admitted that out of three blows given by Ratan Singh to him, one was saved by Jawahar Singh. The witness admitted that Jawahar Singh brought lathi from his village and further stated that villagers used to keep lathi with them and thereby repeating his statement, it was admitted that he and Jawahar Singh were already having lathis with them. Though, later on, witness stated that only Jawahar Singh was having a lathi.

PW 3 Dharm Singh again stated that he along with Jawahar Singh, Nag Singh and Jan Singh visited Ratna's place, where Ratna assaulted Nag Singh and Jan Singh. Deceased Nag Singh sustained one blow on his heath, but due to turban, it did not bleed. In his cross-examination, witness stated that none of them were having a lathi in their hands. Jawahar Singh saved Jan Singh with “Gocha” (a small thin stick). Witness, however, admitted that deceased's brother Bachan Singh's daughter was engaged with Agra's younger brother Babu. However, said engagement did not continue. Thus, accused Ratan Singh also refused to maintain his daughter's engagement with the deceased's relative. It is important to notice that in the cross-examination, said witness admitted that he stayed at Ratan Singh's place for a period of one hour and before occurrence,

Panchayat assembled, but, at that time, he was not present.

PW 6 Dr. Shyam Sunder stated that on 05.05.1984, at around 11.00 a.m., he had examined the injuries of Nag Singh and prepared his injury report (Ex.P-7). Nag Singh died thereafter at 03.35 p.m. and, thereafter, post-mortem report was prepared, showing two grievous injuries on the vital part of the deceased. Injuries No. 1 and 2 were found to be sufficient to cause death in normal circumstances. In his cross-examination, witness admitted that injuries shown in the report can be caused by one or two blows.

DW 1 Sukhi stated that his brother Agra was not present on the scene of the occurrence. Deceased along with three others came to their residence along with lathis. When all the four gave call to my father, he came out. The deceased along with three, thereafter, asked as to why they are not maintaining engagement of his daughter. At that time, one of the persons, out of four, pulled her hand, then Ratna tried to release her and, in that process, Ratna's vest (“Baniyan”) was torn out. They all stayed there for one hour.

PW 4 Jalam Singh, in his cross-examination, admitted that during the course of investigation, Ratna's daughter had stated

that she was pulled by the deceased and three others. The lathi recovered, was not found to be blood stained. Thus, said witness has corroborated the statement of DW 1 Sukhi.

From the material discussed above, it is established that deceased Nag Singh died out of head injury and the said injury was caused by Ratna Ram. Thus, to this extent, prosecution succeeded to establish its case, because not only occurrence took place in the presence of eye witnesses, but the statement of eye witness has been corroborated by the other witness, so far as incident of assault by Ratna. The fact now remains as to whether accused is having defence as provided under Section 100 of the I.P.C.

DW 1 Sukhi has stated that she was tried to be pulled by one of the persons out of all persons and, during that process, firstly accused tried to release her and during that process it seems that accused gave one lathi blow to deceased. This part was suppressed by the prosecution. Thus, they had not correctly stated initial story, though one of the eye witnesses, PW 3 Dharm Singh admitted that they stayed at Ratna's place nearly for one hour and the said statement is corroborated by DW 1 Sukhi. It has already been admitted by Dharm Singh that before the occurrence, Panchayat met, where Ratna refused to

engage his daughter, though witness stated that he was not present in the Panchayat. However, when such fact was disclosed in the corss-examination, it comes out that the prosecution suppressed initial story which otherwise is material. If deceased along with three others came at Ratna's place to take away Sukhi or to force Ratna to engage his daughter, then it becomes clear that the accused can gather intention of kidnapping of his daughter, because PW 2 Jan Singh admitted that he and Jawahar Singh came with lathi, though he had improved his statement by stating that only Jawahar Singh was having a lathi, after stating the fact that in village, every-body moves with a lathi. Therefore, if the material is looked in totality, then it becomes clear that deceased along with three came with lathis at accused's place to force him to engage his daughter. However, when the proposal was not accepted by the accused and one person pulled Sukhi to take her forcibly, then after some fight, Ratan Singh gave a blow to deceased Nag Singh to release his daughter. In such circumstances, it becomes a case falling under Fifth exception available under Section 100 of IPC and, in those circumstances, accused cannot be convicted under Section 302, IPC.

We see even contradictions in the statements of eye witnesses in regard to the fact as to whether they were having

lathis in their hands or not. Witness Jan Singh admitted that villagers keep lathi and further admitted that he and Jawahar Singh were having lathis in their hands, though subsequently admitted existence of lathi with Jawahar Singh only. The fact remains that even the eye witnesses have tried to suppress certain facts and in those circumstances, testimony of those witnesses cannot be relied upon entirely, more so, after going through the statement of Dharm Singh (P.W.3), it comes out that the prosecution has even suppressed the initial part of the story, thereby other than one that deceased was given a lathi blow by accused, other part of the story given by one prosecution witness is not corroborated by other. Hence, in view of the above situation, even the presence of Agra s/o.Ratna becomes doubtful. All the three eye-witnesses have shown Agra's presence on the scene of the occurrence, but none of the witnesses stated about his participation in the fight which again seems to be unnatural because if it is believed, then fight was initiated by accused Ratna by giving 3 – 4 hits to Jan Singh and thereafter to deceased Nag Singh, then a young boy keeping silence becomes unnatural. DW 1 Sukhi, in her statement, made it clear that Agra was working at his field at the time of occurrence. Thus, we find that the prosecution could not prove Agra-s presence beyond doubt, because doubtful testimony of the prosecution eye witnesses cannot be believed on this aspect,

which otherwise seems to be unnatural.

Now averting to the statement of PW 6 Dr. Shyam Sunder, Nag Singh had sustained two grievous injuries on his head and both the injuries were sufficient to cause death. In the cross-examination, said Doctor admitted that injuries reported in the post-mortem report can be caused by one blow.The prosecution eye witness has also stated that accused Ratna caused one blow on the head of deceased Nag Singh. Hence, it becomes clear that deceased sustained only one blow on his head by a lathi. If the accused was having intention to kill deceased, then he could have caused blow on many places, more so, when before causing a blow to deceased Nag Singh, Jan Singh was given 3-4 hits, out of which one hit caused injury on the knee thus fact comes out that Ratan Singh was in a position to cause many blows, but accused had caused only one blow to Nag Singh, Hence, it cannot be said that accused was having intention to kill Nag Singh. Rather even one blow was given by accused to release his daughter at the stage when accused and three others tried to take away Ratna's daughter as they were adamant to engage her with Bhup Singh's son Nav Singh. Thus, keeping in mind medical evidence, a case under Section 302, IPC, is not made out, rather a case under Fifth exception of Section 100, IPC, is made out. In these circumstances, we are unable to

accept the arguments raised by the learned Public Prosecutor for the State – appellant, more so, when we do not find any perversity in the judgment of the learned trial Court.

In view of the discussion made above, we are not inclined to accept the appeal preferred by the State of Rajasthan.Thus, the same fails and is accordingly dismissed. The accused need not to surrender.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

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